

DISCIPLINE DIGEST

The Society of Notaries Public of British Columbia

March 2010

TERRY SIDHU

Commissioned: May 5, 2005

The Member was charged with professional misconduct and a breach of Rule 11.01 of the Rules of the Society and Sections 18 and 28(2) of the *Notaries Act* by purporting to provide independent legal advice to a client regarding a document evidencing settlement of an estate.

The Member and the Society entered into an Agreed statement of Facts and Admission with respect to the charge.

Agreed Facts:

1. In April of 2009 the member met with KW for a scheduled appointment to notarize documents.
2. The member reviewed the documents and considered the matter to be an “ILA” appointment – independent legal advice – with respect to an agreement provided to KW by lawyer DB.
3. The documents in question were entitled:
 - a. Agreement as to Disposition of an Interest in an Estate (Estate of SMH) with the Estate’s Assets, Liabilities and Distribution list attached as Schedule A;
 - b. Solicitors Certificate of Independent Legal Advice;
 - c. Consent;
 - d. Disclaimer of Interest and Release.
4. The Member provided the requested ILA and signed the documents as a notary public.
5. When the documents were returned to him, lawyer DB challenged the member’s authority to give the advice required and to sign the ILA and other documents.
6. DB reported the member’s conduct to the Law Society of British Columbia who informed the member that in their opinion he was practicing law in contravention of the *Legal Profession Act* and the *Notaries Act* and requiring him to sign a form of Undertaking and Covenant, which he did.
7. The Law Society lodged the complaint with the Society of Notaries Public of BC.
8. The Member refunded the notarization fee paid by KW.

Admission:

The Member admits signing the documents on his misunderstanding that he was allowed to provide ILA with respect to the Agreement without addressing his mind to the fact that the Agreement dealt with an agreed variation and settlement of the Will of a deceased person. The Member admits that providing legal advice on an estate matter is unauthorized by the *Notaries Act* and the Society's Rules.

Findings of the Inquiry:

The Inquiry panel met to review the Agreed Facts and Admission and found that the Member did breach the *Act* and the Society's Rule 11.01 as charged.

The panel understood that the Member's appreciation of the nature of the task asked of him was in error at the time and has since been corrected. The panel noted the Member's co-operation with the Law Society in the matter of the Undertaking and Covenant and believes that the Member will comply.

Penalty:

The Society and the Member agreed upon a recommendation for penalty. The recommendation was considered by the Inquiry Panel and accepted.

The Member has no discipline history. In light of the fact that the Member was laboring under a misunderstanding as to the nature of the documents he was to give legal advice on and how it related to the limitations on his practice pursuant to the Notaries Act, as well as the fact of his cooperation with the Law Society of British Columbia and his undertaking to that body, the panel is content that the need to be vigilant to those limitations is now uppermost in his mind.

The Inquiry Panel accepts the Member's Admission and recommends the agreed penalty of a reprimand and a fine of \$1,500 inclusive of costs.

- a. A reprimand be placed in the member's file;
- b. The member pay a fine of \$1,500 inclusive of costs.

Board of Directors:

The Report of the Inquiry Panel was reviewed and considered by the Board of Directors who accepted the Report and the recommended penalty.